Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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OFFICE OF SECRETARY

Implementation of Section 9 of the Communications Act	))	MD Docket No. 94-19
	)	
Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year	)))	

COMMENTS OF LEONARD COMMUNICATIONS

Leonard Communications ("Leonard"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding. Leonard serves only 65,000 subscribers, but their remote locations require 125 headends with over 110 headends serving fewer than 1,000 subscribers.

Introduction and Summary

Leonard's comments are narrowly focused on the method by which the Commission proposes to levy its regulatory fees on small systems. To avoid having small operators pay a disproportionate amount of regulatory fees, Leonard believes that the Commission should adopt rules which permit small system operators to aggregate their total number of subscribers for the purpose of calculating regulatory fees.

Discussion

The Omnibus Budget Reconciliation Act of 1993 (the "1993 Budget Act") added a new Section 9 to the Communications Act of 1934.[1] Section 9(a) authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities. Section 9(g) contains a schedule prescribing the amounts to be collected for various service categories. Specifically, for fiscal year 1994, the schedule provides that each cable television system is to be assessed an annual regulatory fee of $370.00 per 1,000 subscribers or any portion thereof. 47 U.S.C. §159(g) (1993); NPRM at ¶75. Although the statutory schedule indicates that cable systems are to be assessed fees for every 1,000 subscribers, the Commission has concluded that Congress did not intend to completely exempt small systems. Thus, the Commission proposes to charge small systems a flat fee of $370.00. NPRM at ¶75.

For rate regulation purposes, the Commission determines system size by a system's principal headend, including any other headends or microwave receive sites that are technically integrated to it's principal headend. Rate Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) ("Rate Order") at ¶465; Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking in MM Docket No. 92-266, FCC 94-38 (released March 30, 1994) ("Second Order on

[1] Pub. L. No. 103-66, Title VI, §6003(a), 107 Stat. 397 (approved August 10, 1993). The new Section 9 of the Communications Act is codified at 47 U.S.C. §159.

Reconsideration") at ¶227. Under this definition, Leonard has 125 systems, 110 of which are small systems (i.e., systems with under 1,000 subscribers), subject to the blanket fee. Based on the FCC's proposal to assess fees on a system by system basis, rather than on an aggregate subscriber basis, Leonard would actually be assessed $1.34 per subscriber, rather than the $0.37 per subscriber envisioned by Congress's fee schedule.[2] Clearly, use of a flat fee for small systems combined with the FCC's system size definition would disproportionately tax small system operators in relation to other operators.[3] This discrepancy will only widen in the future as large operators increase the amount of fiber optic super trunks between their various service areas. As a result of these fiber upgrades, a large operator who required as many as 30 headends to serve a large region in 1989, may require only 10 headends to serve the same area in 1994. With the rapid onslaught of advanced technology, this headend consolidation trend will continue for large operators. See generally, Telecommunications, January, 1994, p. 1 (describing the evolution of large cable systems into fiber-to-the-service-area networks).

Laying fiber, however, is very expensive. In an environment where system revenues are being reduced by 17%, smaller operators generally lack the resources to install fiber and combine headends. Nor is capital readily available to small operators to make such

[2] Leonard's 110 small systems serve a total of 30,350 subscribers. At $370 per small system, Leonard would be assessed $40,700. This averages out to over $1.34 per subscriber -- more than **three and a half** times the rate established by Congress.

[3] According to the Commission estimates, there are 5,878 small systems with a total of 1,934,677 subscribers. NPRM, Appendix C, Table 2. At $370 per system, small systems would generate $2,174,860. Id. This averages out to over $1.12 per subscriber.

improvements. Recognizing these financial constraints, the Cable Act explicitly directs the Commission to adopt regulations that reduce the regulatory costs imposed on small systems. 47 U.S.C. §543(i) (1993). The Commissioners have consistently expressed their concern that the Commission's regulations do not have an adverse impact on small cable operators. See, e.g., Rate Order (Separate Statement of Commissioner Andrew C. Barrett); Order, 8 FCC Rcd 5585 (1993) ("Stay Order") (Separate Statement of Commissioner Ervin S. Duggan); Second Order on Reconsideration (Separate Statement of Commissioner Andrew C. Barrett). To this end, the FCC has attempted to craft its rules to ease the burdens on smaller operators. See Rate Order at ¶¶462-65; Second Order on Reconsideration at ¶¶201-28.

Although the regulatory fees were adopted in connection with the 1993 Budget Act, rather than in the 1992 Cable Act, there is no reason to believe that Congress's concerns about the financial burdens imposed upon small operators have changed. As previously explained, applying the rules on a system by system basis would cause small system operators to bear a disproportionate amount of the regulatory costs on a per-subscriber basis. This result would be directly contrary to the avowed intention of Congress and the FCC to reduce the regulatory costs imposed on small operators. This inequity can be avoided only by permitting small system operators to aggregate their total number of subscribers for the purpose of calculating regulatory fees.

Conclusion

For the foregoing reasons, Leonard urges the Commission to permit small system operators to aggregate their total number of subscribers for the purpose of calculating regulatory fees.

Respectfully submitted,

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